

**Supplemental Letter of Findings: 04-20100705**  
**Gross Retail Tax**  
**For the Years 2007, 2008, and 2009**

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**ISSUES**

**I. Computer Based Training – Gross Retail Tax.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-2(a); IC § 6-8.1-5-1(c); Sales Tax Information Bulletin 8 (May 2002).

Taxpayer argues that its purchase of computer based training is not subject to sales or use tax.

**II. Prospective Customer Lists – Gross Retail Tax.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-2(a); IC § 6-8.1-5-1(c); Sales Tax Information Bulletin 8 (May 2002); [45 IAC 2.2-3-20](#).

Taxpayer maintains that the purchase of customer "leads" was not subject to sales or use tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana car dealership. Taxpayer sells new and used vehicles. Taxpayer also sells car parts and provides repair services to its customers.

The Department of Revenue (Department) conducted an audit review of Taxpayer's business records. The audit concluded that Taxpayer owed additional sales/use tax and issued an audit report and proposed assessments. Taxpayer disagreed with a portion of the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. A Letter of Findings was issued. Subsequently, Taxpayer sought a rehearing on the ground that certain of its original issues had not been addressed in the Letter of Findings. The rehearing was granted in a letter which stated that "the electronic transfer of [customer] leads and the information services provided by General Motors..." would be addressed in that rehearing.

The rehearing was conducted by telephone, and this Supplemental Letter of Findings results.

**I. Computer Based Training – Gross Retail Tax.**

**DISCUSSION**

Taxpayer explains that it purchases "information services provided by General Motors Corporation as training assistance for the [Taxpayer's] employees." Taxpayer states that this information service "allows [its] employees to access online training material as well as completing a test online which [Taxpayer] requires of its employees."

In order to explain the nature of its service, Taxpayer has offered printed a page from what is apparently GM's website concerning this service. The printed information states as follows:

GM Training is a subscription-based training system available to all GM-Dealers that provides virtually all sales, services, parts, finance, and insurance, business office and management training.

Taxpayer has also provided a letter sent to "All GM Dealers" which states that the training fees are based each dealer's "Annual Retail Sales." Dealers which sell few cars are charged less than dealers which sell large numbers of cars.

The audit report indicates that it was treating these costs as computer "subscriptions" and states that it had assessed tax on "previously untaxed purchase or subscriptions of this nature." As authority for that decision, the audit report cites to Sales Tax Information Bulletin 8 (May 2002), 25 Ind. Reg. 3934, which states in part:

Pre-written programs, not specifically designed for one purchaser, developed by the seller for sale or lease on the general market in the form of tangible personal property and sold or leased in the form of tangible personal property are subject to tax irrespective of the fact that the program may require some modification for a purchaser's particular computer. Pre-written or canned computer programs are taxable because the intellectual property contained in the canned program is no different than the intellectual property in a videotape or a textbook.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Under IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-3-2(a). A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

Specifically, IC § 6-2.5-2-1 provides as follows:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-3-2(a) provides for the complementary use tax:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

The issue is whether Taxpayer's employees were simply accessing an online training service or was the Taxpayer purchasing or leasing computer software on a subscription basis. Upon review of the information provided by Taxpayer and the information contained within the audit report, Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that the transactions were not subject to sales tax and that Taxpayer was paying for training services provided by GM; Taxpayer was not purchasing tangible personal property, not purchasing computer software, and not purchasing "subscriptions."

#### **FINDING**

Taxpayer's protest is sustained.

### **II. Prospective Customer Lists – Gross Retail Tax.**

#### **DISCUSSION**

Taxpayer purchased customer "leads" from both "Cars Direct" and GM. The Department's audit concluded that the leads were subject to sales/use tax pursuant to [45 IAC 2.2-3-20](#) which states in part that, "All purchases of tangible personal property which are delivered to the purchaser for storage, use, or consumption in the state of Indiana are subject to the use tax."

As noted above in Part I, under IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-3-2(a). A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

In this case, the audit found that Taxpayer had made purchases which were subject to sales tax but failed to pay that tax. Therefore, the audit assessed the complementary use tax.

The audit report also cites to Sales Tax Information Bulletin 8 (May 2002) as follows:

The sale of statistical reports, graphs, diagrams or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is so produced is considered to be the sale of tangible personal property unless the information from which such reports was compiled was furnished by the same person to whom the finished report is sold.

However, the same Bulletin also states:

The charge for reports compiled by a computer exclusively from data furnished by the same person for whom the data is prepared is considered to be for a service and is not subject to sales or use tax unless it is part of a unitary transaction which is subject to sales or use tax.

Taxpayer explains that both "Cars Direct" and GM compile information based upon queries made to the two vendors' websites. Customers access these websites, search for a particular vehicle, and leave behind their personal information such as address, email address, phone number. Because the two vendors have access to Taxpayer's inventory of vehicles, the two vendors are able to match potential customers with the vehicles in the Taxpayer's inventory. The two vendors compile this customer information and sell it to car dealers such as Taxpayer. The information is sent to Taxpayer by facsimile or by email.

Taxpayer has not provided copies contracts with either GM or "Cars Direct." However, Taxpayer has provided invoices received from Cars Direct. The invoices indicate that each customer lead costs approximately \$21.00.

Taxpayer purchases "tangible personal property" in the form of customer information obtained from GM and "Cars Direct." Taxpayer did not supply the information to GM and "Cars Direct." Those reports are obtained on the basis of a per-unit cost billed to Taxpayer each month. The Department correctly determined that the purchase of the customer leads from "Cars Direct" and GM were subject to sales tax.

#### **FINDING**

Taxpayer's protest is respectfully denied.

#### **SUMMARY**

Taxpayer's protest is sustained in part and denied in part. The purchase of the computer based training is not subject to sales/ use tax. The purchase of the customer leads is subject to sales/use tax.

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